

DRAFT MINUTES
STEERING COMMITTEE MEETING
JUNE 24, 2004

Attendees: F. Sanders, K. Lentz, D. Kovacs, T. Botkins, E. James, M. West, D. Paylor, B. Burnley, T. Wagner, J. Hassell, S. Kudlas, B. Hulburt, M. Rubin. Guest: John Lain

The meeting began with a review of the draft minutes from the last Steering Committee meeting. A number of modifications both substantive and clerical were made which will be reflected in the final minutes to be provided to the TAC members. There also was a request that future minutes include more details of the discussions of issues which were raised in the meeting.

David Paylor and Mark Rubin reported on a meeting with Senator Williams last week. The purpose of the meeting was to provide him with an update on TAC activities and to listen to his thoughts on the direction of the TAC. The meeting was positive and Senator Williams is quite interested in the work of the TAC. The Senator made it clear that the regulation being worked on by the TAC should not be a growth management regulation and that he does not believe that the state should be making decisions for localities in regard to allocations or methodologies of needs determinations. He does believe that the state has a significant role in reviewing and approving needs determinations made by localities.

This led to a discussion by Steering Committee members about whether the state could approve a needs determination in a Phase II assessment without first having standards for the methodology to be utilized. A proposed option was that DEQ would develop acceptable methodologies and allow localities to deviate from them only upon proper documentation. DEQ staff was asked to report on alternative methodologies and criteria for exceptions.

It was also reported that Senator Williams suggested that similar meetings be held with Senator Hawkins and Delegate Cox; David Paylor indicated those would be arranged.

The Steering Committee then reviewed two flow charts. One had been prepared by the AWWA utilizing their vision of what the process would look like and the other by Scott Kudlas reflecting the existing draft reg. Both charts had been developed some time ago, and neither had been revised to reflect the discussions at the last Steering Committee meeting.

Comparing and contrasting the two flow charts provided the opportunity to identify certain issues that require further discussion among the respective interest groups and, if they remain issues, by the full TAC. The issues identified were:

1. Who prepares the plans?
 - Under the AWWA chart, the water purveyors do the plans while the DEQ chart assumes that localities prepare the plans.
2. Who approves needs projections?
 - AWWA's chart suggests that it is VDH, while DEQ's chart suggests that DEQ has this responsibility.
3. When must the Phase I plan be developed?
 - AWWA's chart suggests only when a locality hits the 80% requirement while DEQ's chart suggests that all localities must do the Phase I plan based on the schedule in the draft reg, which is based on population size. This also raises the question of when the state becomes involved in planning – before or after a locality makes a needs determination.
4. Who develops environmental information?
 - AWWA's chart suggests it is a state responsibility, while DEQ's chart suggests it is a local government responsibility.
5. When is a plan incorporated into the state plan?
 - AWWA's chart suggests that it is done during Phase II with a notation of conflicts. DEQ's chart suggests that it is at the conclusion of Phase II.
 - The Steering Committee had previously discussed the concept of having Phase I plans made part of the state plan once they are approved. It was generally supportive of the notion that there would be no formal incorporation of Phase II, but that the information generated in Phase II would be made part of the state plan.
 - It was also noted that if there is no formal approval of Phase II plans then the opportunity for public participation might be diminished and this was a matter of concern to several interest groups.
6. A concern was raised about whether the Phase I plans would be burdensome on localities and discussion indicated that the idea was for this to be descriptive only; this limits what would be required.
7. Another concern that was discussed was how to obtain meaningful comment from reviewing agencies during Phase II. A potential permittee would benefit greatly from such comments but, currently, responses to requests for comment from such agencies are not always meaningful or timely. One suggestion was to explore legislative or regulatory changes to accomplish this; another was to convene a technical evaluation committee with representatives from the various agencies to address the permit applications.

Bob Burnley then outlined DEQ's thoughts on possible ways to streamline the permitting process. They were as follows:

1. Joint public notice by VMRC and DEQ
2. Joint public hearings by the two agencies
3. Time limits on permit processing by the state agencies
4. Coordinated action so that one agency must act within a certain number of days from when the first agency acts

5. Independent action on a permit by the state without waiting for Corps action

It was noted that some of these changes might require legislative changes.

A significant discussion arose around the question of whether it would be possible for a permit application to be filed for a specific project in the absence of a Phase II assessment. The scenario in which this might arise is when an industry which required water resources sought to locate in a locality in which a Phase II assessment had not been done.

The value of Phase II assessments to the overall planning effort was raised. It was noted that Phase I plans are descriptive in nature and limited in content so as not to create a significant burden on localities, but that they do not contain in-depth information on needs determination, provide all of the necessary information on actual conflicts, nor review alternatives in great detail. The concern was raised that an unanticipated permit application should not disrupt the planning effort and that the permit application should be viewed in conjunction with the information that would be generated in a Phase II assessment.

Another aspect of this issue concerned what impact the planning effort could have on the permitting process. It was noted that the TAC had previously discussed and generally agreed that planning would not prejudice anyone's rights under existing law. This would, necessarily, include the right to apply for a permit. It was asserted that to require that a Phase II assessment be completed before a permit application could be submitted would require a significant statutory change.

A practical concern was raised as well. An applicant for a permit could be "held hostage" by a locality that either refused to submit a Phase II plan or simply had not had the time and resources to complete one.

A further point discussed was that part of the concept behind a Phase II assessment was to provide a means for alternatives to be narrowed, guidance from reviewing agencies to be obtained, and a thorough needs determination to be completed and approved. These are significant incentives for any proponents of a project to gain from a Phase II assessment. It was recognized that a project that had not been vetted through a Phase II assessment would have a harder time obtaining a permit.

This led to a further discussion of whether Phase II should be mandatory or optional for a locality that had an established need. Concerns were again raised that making such an assessment optional eliminated an important part of the planning process for a locality or a region. While much of the same data would

be gathered in the permitting process, such data would be project-specific, while the Phase II plan would be broader in scope (i.e. most likely focused on more than one project in a locality or a region).

One suggestion was that the processes be allowed to run concurrently in order to gain the benefits to the planning process of a Phase II assessment and also allow the permitting process for a specific project to move forward. A second suggestion was that the regulations state the expectation that the Phase II assessment be done, but set out certain exceptions which would allow the permit process to go forward without a Phase II plan in place. This would provide a mechanism for reacting to the unexpected.

The discussion then moved briefly to the concept of “advocacy”. It was acknowledged that the word “advocacy” itself might be a problem for some. The concept is that after all state permits are granted, the state would stand with the permittee in its fights with other states and during the Corps permitting process. There was also discussion about the state being able to say that the permitted project was in the “public interest”.

The remainder of the meeting was devoted to a review of the draft regulation. Some comments were made, but each group was solicited for further insights and changes. It was also noted that significant revisions would be required if the decision of the interest groups supported the proposal to eliminate the incorporation of Phase II assessments. Consequently, the following discussion of the reg review is not comprehensive but seeks to describe the main issues raised with the reg thus far.

A request was made that a new paragraph C be added to 9 VAC 25-780-10 to state that the reg is not an allocation system nor does it affect existing rights as to water.

A discussion of the same paragraph evidenced general agreement among members of the Steering Committee that localities would do the planning, but it was noted that the AWWA flow chart previously discussed still made this an issue for discussion.

It was noted that the definitional section of the reg regarding “firm yield” and other terms still required discussion.

A request was made to add a new subparagraph “iv” to section 50 stating that local programs shall encourage conservation.

A request was made to amend section 60 to make the requirement of a public hearing, referred to in a later section of the reg, clear up front.

The next meeting of the Steering Committee will continue with a review of the draft regulation, discuss the results of the various interest group meetings, and review those parts of the State Plan that can be produced over the next several weeks.

Dates for the next Steering Committee meeting were set for July 12 and 27 and August 3 and 23 with the understanding that TAC meetings and interest group meetings would also be held during this time.

The meeting was then adjourned.